THE

IRISH JUDICATURE BILL

BETWEEN "THE HOUSES."

BY

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The Irish Judicature Bill has left the House of Lords in the shape in which, it may be presumed, its all-powerful and self-sufficing sponsor has determined that it shall become law. It is not likely that it will undergo much modification in the House of Commons. English Members will be indifferent—Irish, probably, unregarded. For, setting aside the official who will have charge of the Bill, and who, as regards its most grievous shortcoming, can hardly be said to be quite impartial, there is but one other Irish lawyer of commanding note in the house, and he has already, quite recently, favoured it with his own peculiar views as to the source from which to draw purification for the Irish Bench. So that, on the whole, it may be anticipated that unless some Scotch Member or two shall provoke an international altercation, the Bill will pass the Commons with little or no serious criticism. And as praise without discrimination seems to be the *mot d'ordre* in the London Press, it is as well that, at this moment of transition from the one House to the other, at least one impartial and earnest voice should be heard to suggest that excellent as the measure may be in the main, it shares the infirmity common to all human things of not being absolutely without faults.

The amendments which were inserted at the last moment in the Lords have altered the Bill more materially than seems to have been generally realized. The old and new clauses do not harmonize very well altogether, but the result seems to be that, ultimately, two of the most obnoxious features

will have disappeared. The threatened Common Law Judgeships are to be spared, and the separate Bankruptcy and Insolvency Court is to vanish. When the first vacancies shall occur in the Common Pleas and Exchequer Divisions, instead of being, as originally intended, left unfilled, they will be supplied, the former by the Judge of the Probate Court, the latter by one of those of Bankruptcy. The existing jurisdictions of the transferred Judges will follow them to the Courts to which they shall be attached, and the special tribunals will cease to exist. Those Judges and their successors will be, to all intents, and for all purposes, Common Pleas and Exchequer Judges, and thus, the "twelve" will be maintained, and, as a consequence, it may be presumed, the Six Circuits left untouched. This, so far as it goes, is unqualified improvement. Of all the false lights supplied to Lord Cairns by his Irish advisers, there was none more deceptive than that which indicated the Common Law Bench and the Circuits as the quarter to select for a display of zeal for retrenchment. There is nothing else in the Judicature to compare with these for the popularity they enjoy or the social uses they subserve. If it be desirable that something like respect for English law shall be inculcated upon the Irish millions, it must be done through the avenues by which alone they are accessible—their fears and their imaginations. For nine-tenths of them, the prestige and majesty of the law have been embodied in the Judge of Assize. Without those, the provincial notions would be drawn from the Petty Sessions Court, elevated by the periodic apparition of the Assistant Barrister. I observe in the last Report of the Judicature Commission strong recommendations for a centralizing of Assizes' business, a diminution of Assize towns, and the like. That may be very well for England, where the law is respected for its own sake; but I venture to think it would be the extreme of mistaken and unstatesmanlike policy for Ireland. Trivial as it may sound to English ears, I am not ashamed to avow my own conviction, that more of wisdom and of true state-craft, for a

people like the Irish, would be shown by not only maintaining the circuit system intact, but by enforcing a revival of the old form and ceremonial with which the Judges used formerly to be received and waited upon in the Assizes' towns, but which of late years have fallen nearly into desuetude. That however, by the way. Meantime, I believe there is no one in Ireland who will not approve the relinquishment of the mischievous purpose of cutting up the twelve Judges and the six circuits, and there are many who, along with the writer, will equally commend the suppressal of the two smaller Bankruptcy posts, as objectionable for the uses to which they were capable of being made subservient as they were equivocal in their well-known origin. The selection of the Courts which are to be the recipients of the transferred jurisdictions does seem a little fantastic. As regards Bankruptcy, one would have thought that the natural thing would be to restore that jurisdiction to its ancient depository, the Court of Chancery. In England it was taken from Chancery and given to the Exchequer, for the sake of relieving a little the enormous oppression of the English Chancery lists. In Ireland it might have been thought that the converse object of eking out the scanty and diminishing lists of the Chancery Judges there would have been an additional motive for restoration. As for the other special jurisdiction, the selection which has been made for it will create some little amusement in Dublin legal circles. Lord Cairns can hardly be supposed to be *au courant* with the gossip of the Four Courts, nor, it is believed, is he one likely to indulge in sallies of practical humour; and yet some suspicions of the kind will be suggested to many by his selection of the Common Pleas as the future Court for Matrimonial Causes.

It must be admitted on the whole, that in what the Bill proposes to take from the Irish establishments, it has been decidedly improved; but it is unfortunate that in what it leaves, it will carry to the House of Commons its worst and most discrediting defect.

Lord Cairns, being English in everything but birth, and such acquaintance as he ever had with Ireland being in a section of it far more characteristically English or Scotch than Irish, depended much, inevitably, upon Irish advisers; whose own judgments, unhappily, were not wholly outside the range of disturbing influences. Hence the enormous initial error of selecting the Common Law establishment as the one that needed paring, while that of Equity was left almost wholly untouched. To awaken attention to this subject is the object of this paper; and, for the information of any members of the House of Commons who may desire to know something about the true merits of the measure which they will be invited to support, it is proposed here to bring together a few facts regarding the establishments for Equity which the Bill found existing in the two countries, omitting from each those Judges who are limited to appeals.

The comparison stood thus:—

For the whole Equity affairs of England, *four* Judges of the First Instance, viz., a Master of the Rolls and three Vice-Chancellors.

For the whole Equity affairs of Ireland, *seven* Judges of the First Instance, viz., a Lord Chancellor, a Master of the Rolls, a Vice-Chancellor, two Judges of Landed Estates, and two of Bankruptcy. One of the Landed Estates' Judgeships was temporarily vacant.

Thus it will be seen that as regards the number of Judgeships Ireland has actually the advantage by three. On the other hand, it is notorious that in the quantity, the value and the importance of the business, the disparity is overwhelmingly in the other direction. I shall not now go into details of which I have lately given some elsewhere. The results which are disclosed by comparison of the lists of the two countries are something simply astounding; and the contrasts are growing, term after term, not more by reason of the inflation of the English lists, than of the dwindling away of the Irish. To keep far within the mark, it may safely be

asserted that the work of the English four is at least four-fold greater than that of the Irish seven. In fact, either the English Equity Judges are in a state of slavery without parallel, or the Irish ones are in a state, to put it mildly, of but very partial occupation.

With this monstrous anomaly and contrast in full and growing enormity, at length the time arrived when a grand measure of reform of our whole judicial system occupied a foremost place among the measures of a strong Government. The qualities which have especially been arrogated for it by its trumpeters are "courage" and "completeness." How did it, in its original form, and as it remained until a few days ago, vindicate its title to those attributes in dealing with this vast abuse? Simply by leaving unfilled the one vacancy in the Landed Estates Court. The Bill, as originally drawn, retained six Judges for Irish Equity, against four for English!

For an explanation of a short-coming so amazing, I can suggest nothing but this—that some one clearly foresaw that any move at all in the direction of the Chancery Judicature could hardly fail to uncover a fact which it would be better to keep veiled, namely, that the giant abuse—the monster legal scandal and anachronism of the time—must be sought for in the highest quarter.

It would have been anticipated, *a priori*, by any informed and disinterested observer, that in a measure making such pretensions, ushered in under such auspices and sustained by such strength, the very first subject to be grappled with would have been this appalling disparity. And by one acquainted with the legal history of Ireland for the last five-and-twenty years it would have been assumed as especially certain that at last the Political Irish Chancellorship had reached the term of its existence.

Here lies, in truth, the very touchstone of good faith and thoroughness in this boasted measure. Whatever else may be its merits, its faltering at this crucial point has brought

in question its claim to the merit not merely of completeness, but even of single-minded earnestness. The scheme which proposed to retain six Judgeships of the First Instance for Equity in Ireland, with still at their head the damaged and discredited political Chancellorship, while, at the same time, challenging admiration for its boldness in striking off two of the Common Law Twelve, was scarcely one to call for the pæans with which a portion of the Press saluted it.

Of his reasons for this opinion the writer now proposes to give an outline, which will enable his readers to judge for themselves whether his views be well founded or not.

There are some points upon which all will probably agree in the abstract, though they may differ when it comes to particular applications of them. No one, for example, will deny that a political Judge is abstractedly an evil thing. Even the Chancellorship of England has been strongly objected to in that light, and it has been often urged by publicists that it ought to be made either wholly political or wholly judicial. What the union of those two functions may lead to, even under conditions the most favourable, has been exemplified in the instance where even a nature so pure and candid as Lord Hatherly's could not save itself from being dragged through the mire of the audacious juggle with which the name of the entirely blameless Sir Robert Collier has been inseparably coupled.

But if the thing be bad in England, what must it be in Ireland? An English Chancellor is political only in the higher sense that he assists in the deliberations of the Cabinet, takes charge of its legal measures, and sometimes, not often, defends its general policy in Parliament. An Irish Chancellor, as they have been since the office became merely Irish; shares actively in the details of executive administration. What would be thought in England of a Chancellor who would be a daily haunter of the Home Office—and what is the Home Office compared with the Under-Secretary's Room or the Law Room, in Dublin Castle? A modern Irish Chancellor

of the right sort gives his attendance at the Castle at least as regularly as in his Court. In fact he passes almost daily direct from the latter to the former. There, he will be in the very hot-bed of all that is worst and most demoralizing in provincialized administration—the focus of all the paltry squabblings and rivalries, one side or other of which may be represented and embodied in his own official and political existence. In Ireland, politics are animosities. There is no such thing as an impartial public opinion. There is no great central mass, as in England, usually inert, but sure now and then to be roused, and then to fling itself with resistless weight into the scale with one party or the other, as was so signally exemplified at the last General Election—a power the mere existence of which, even when in slumber, holds the active and combatant parties in salutary check. In Ireland, instead of this, there is the never-ceasing war of races, of sects and of factions. There is no moderating force between them. Nothing is too black for them to think and say of each other. If there be a Chancellor who is known to be holding his office by the favour of the one, and, possibly, with no other recommendation but that, he will be sure to be distrusted and despised by the other; the judicial prestige and repute will gradually ebb away from him, and he will come at last to be thought of in the light of a mere thick-and-thin partizan. Since Sir E. Sugden's departure in 1846 this noxious evil has been gathering to a head, until, at length, it culminated at a height which can hardly be over-topped, but will surely not remain unemulated. For it has been all but avowed that the first use of the office is to place in the hands of an incoming minister the highest bid he can make in some quarter from which support or forbearance will be needed for his policy. If professional merit and political expediency can be found united in the same person, well and good, but if not, so much the worse for professional merit. No wonder, then, that a certain party should desire that the making of the Judges should be confided to the Chancellor, for that would be

to consign it, by-and-by, to a power which has shown ere now that it can make the Chancellor himself.

Another proposition I will lay down which no one will dispute in the abstract. The salaries of Judges should bear a just proportion to the earnings of the Bar from which those judges are taken. They should be large enough to insure at all times the command of the best men, but not so large as to suggest the idea of some sinister consideration. The English scale is certainly not in excess of that standard. It is well known that, there, barristers often lose in income by accepting the Bench. Even the Chancellorship itself, if nothing but income were thought of, would be no temptation to a Bethell or a Cairns or a Palmer. But how is it in Ireland? I do not believe that there is at this moment at the Irish Bar more than one, if there be even one, who is realizing by private practice £3000 a-year, or that there are half a dozen who are making so much as £2000. The consequence is that a Puisne Judge's salary of less than £3700 has never failed to command the services of the very foremost men in the profession. The Irish Bench is crowded with Ex-Attorney-Generals. Of the nine existing Puisnes there are only two who did not pass direct from the first law office, and so did the Master of the Rolls, the Vice-Chancellor and the Judge of Probate. Among all these the highest salary is £4000, and as to all save two it is under £3700. How then is it to be accounted for, that there is one legal office so out of all keeping and proportion with the National Bench and Bar as that it is endowed with a salary much more than twice as great as that which the very first man of the day will always gladly accept, with a personal following costing £4500 more, a retiring pension of £4000 (three or four of them usually co-existing,) and other allowances; making altogether, for that one office, a cost to the public treasury of some £25000 a-year?

The origin of the anomaly is not far to seek. The Chancellor was formerly the speaker of the Irish House of Lords;

and after his deposition from that station, the office was made to serve a much more useful purpose, that of consolidating the Union by attracting eminent English lawyers to the head of the Irish Bench. But, with that object, the English standard of Bar incomes, not the Irish, was the one that must be had regard to.

By two Statutes passed in 1832, the remunerations of all the great judicial officers in both Kingdoms were, in lieu of all other emoluments, commuted to fixed annuities—the English Chancellor to £14000, the Chief Justice, £10000, the Chief Justice of the Common Pleas, £8000, and the Chief Baron, £7000. The Irish Chancellor was fixed at £8000. Nor was that excessive so long as the great object which had justified the original scheme was kept in view. But when that wise policy was finally abandoned on the retirement of Sir E. Sugden and the appointment of Mr. Brady in 1846, the retention of that salary, with the other proportionate appanages, became what it has been increasingly ever since, an utterly indefensible abuse and anachronism.

What made this the more flagrant is that in deference to public sentiment in England large portions of those English salaries were afterwards relinquished—£4000 by the Chancellor, £2000 by the Chief Justice, £1000 by the Chief of the Common Pleas and £1000 by the Master of the Rolls. But the Irish Chancellors held fast by the Act of 1832.

The picture would be imperfect without one fact more. The English reductions were made in the face of enormously increasing business. During the same period the work of the pecuniarily immutable Irish Chancellor dwindled utterly away, not, merely, from the general decay of the country, but because Act of Parliament after Act of Parliament was passed for diverting it to other quarters. The Encumbered Estates Court (1849,) the Bankruptcy Court, (1836-7,) the Chancery Regulation Act, (1850,) the Chancery Act, (1867,) with its appointment of a Vice-Chancellor, left the Chancellor nearly high and dry. All this I have spoken of more fully elsewhere.

The result was that an unwatched economic abuse grew and flourished unnoticed for a quarter of a century, until in the last lustrum of that cycle it rose to mere *reductio ad absurdum*.

Such, then, was the history, and such the condition, moral and economic, of this office of Irish Chancellor, when Lord Cairns's native advisers came to trace for him the lines of his great Irish Bill. How did they propose to deal with an institution which I venture to think I have shown had lagged somewhat behind the time and required at least some careful pruning? Well they have made of it the very *enfant gâté* of their Bill. It is not that it is merely spared by silence; but the 35th clause of the original Bill which so sinisterly foreshadows a future reduction to the ranks of our three Chief Judges and our Master of the Rolls, exempts the Chancellor, while the 85th lays down with anxious iteration that the Act shall in no way affect his office or his position or his patronage. And to make assurance doubly sure, among the very latest amendments, and as if it were some great artist giving the last fond lingering touches to the favourite bit of a masterpiece, there is interlined in the same clause—"salary or pension." Office, position, patronage, "salary or pension"—all these, whatever else may suffer, are to be kept sacredly intact. The salary of £8000, the pension of £4000, the patronage of £4500, the outfits of £1000—all the items which, between incumbents ex and present, make up the usually existing total of over £25000, all are to be perpetuated lest the Empire should lose the inestimable blessing of a political Chancellor in Ireland. And there is a new provision enabling him even to increase the salaries of his dependants!

Doubtless it would in ordinary times have required some moral courage to have faced the clamour that would have saluted any attempt to deal with this gross abuse in an isolated way. But we are now in a time of great Imperial recastings both of jurisprudence and of judicatures, and with a Government which arrogates the virtue that ought to accompany

strength. And it is disheartening to find that, even with such a work in hand, the ablest, the most self-reliant, the strongest reformer of judicatures that probably England has seen since the days of the first Edward can not only find nothing in the Irish Chancellorship to need rebuke or correction, but that language must be ransacked for terms of conservation with which to fence round its cherished and renovated life.

But, while the office is to remain thus unreformed as regards tenure and endowments, a great change is about to be made in its occupation. Instead of, as of late years, merely "assisting" at the hearing of about thirty Equity appeals in a year, with some other trivialities which, though they may swell a return of sittings, were little more than make-believe, the Irish Chancellor is now about to be made the President of a Court which will no longer be one for equity only, but for Common Law, Criminal Law, Parliamentary Franchise Law, and Land Act Law. The whole jurisdiction of the Exchequer Chamber is be transferred—writs of error, bills of exceptions, new trial orders—and not only those, but, in terms of the 19th clause, every judgment or order whatever that can be made by any division of the High Court, or any Judges or Judge thereof, with the trifling exceptions made in some later clauses, will be appealable to the new Court. Nor is even the Crown side of the Queen's Bench Division exempted; so that Mandamus, Prohibition, Criminal Information Orders, and the like, appear all to be covered.

It must be admitted that this is a change which goes far, if not the whole way, towards answering the argument for the absolute abolishing of the office. The Chancellor may be expected to be henceforth fully, and perhaps even onerously occupied. In addition to the review of ten separate tribunals which belongs to the present Court of Appeal, some of the most arduous and responsible of the duties hitherto of the Common Law Judges will now be cast upon him and his two colleagues. These latter, by a curious (but, I am sure, merely thoughtless) combination of details will tend inevit-

ably, sooner or later, to fall into the hands of men of the second order. It is the Chancellor, therefore, that must be looked forward to as the mainstay of that Court, and if he be a strong man, he will be supreme in it. But while all this goes far to justify the retention of the office, it adds overwhelming strength to the case which demands that its holder shall be removed from the evil influences that spring from precariousness of tenure and distractions of politics.

That is the point of view of expediency, but there is higher ground to be taken. Were the Peers of England still under the spell of that same unaccountable apathy which caused them to let slip away, almost silently, one of the main anchors of their own order, when, in an assembly containing not only great lawyers but constitutional statesmen, it passed unnoticed that this Bill invades one of the fundamental principles of the Revolution Settlement? By the Act of Settlement it is laid down as a main bulwark of "the rights and liberties of the subject" that "Judges Commissions be made *quamdiu se bene gesserint*," and that they be irremovable save on the address of both Houses of Parliament. The Chancellor was not then within the meaning of that law, for he was hardly a judicial officer at all, the vast bulk of Equity being the growth of later times: and the Judges understood to be dealt with were those familiarly known as the "Judges of the Land." But how will it be with the Irish Chancellor after this Bill shall have become law? He will have stepped into the place of the "Judges of the Land" as to some of the most delicate, responsible, and critical of their functions, civil and criminal. You may go on calling such a Judge Lord Chancellor, but there is no magic in a name. To every substantial intent he will be within both the spirit and the letter of the Act of Settlement: and I maintain that that great fundamental law of the constitution will be invaded, unless in tenure and permanence he be assimilated to all the others of the order whose independence it so anxiously guards, and to whom he is now about to be annexed.

It is true that the judicial integrity is no longer menaced from the quarter against which that enactment was directed. But its protection is as much needed as ever, and against influences all the more dangerous that they are more insidious and self-deceptive. Instead of dependence upon the Crown, dependence upon Party—interested self-deception—temptation to show oneself worthy of past favour, and deserving of future patronage. Fancy in that position some man of the sort of invertebrate pliancy of nature, which is not uncommon in Ireland, which for want of stable notions about anything, takes up with the pressure, the expediency, the interest, the party cry of the moment, adopts them as the substitute for independent opinion, and persuades himself that in obeying them he is acting upon beliefs his own. Nothing will keep such a man safe from his own weakness but the consciousness of absolute independence—the knowledge that there is nothing left for him further to hope or to fear.

Among the jurisdictions about to be transferred, there are some to which the foregoing considerations have especial application. They are at present vested in the general body of the judges, and without any appeal, as they will be also in the new Court. It is these that have sometimes brought into prominence the least favourable aspect even of our entirely independent Bench. Cases which drew into conflict the class interests of landlords and of tenants or affected the balance of parliamentary constituencies have repeatedly exhibited Courts divided according to the known political proclivities of their members. Some decisions have been made by majorities in Land Cases Reserved which, to the common understanding, seem simply astounding. This has been due mainly to the unprecedented and most unconstitutional frame of the first section of that Act, which, as to what is called the Ulster Custom, placed the tribunals in the position less of Courts of Justice than of supplementary legislatures making a law for each case. Not much harm has as yet been done, because, it being known that those Judges were raised by

their tenure above the reach of all undue influence, no one ever dreamt of imputing to them anything worse than an unconscious yielding to prepossession. But fancy some possible Chancellor of the future hearing land questions which inflame the passions of classes, or registry questions which will turn the scale in a borough or a county, and knowing that he is closely watched, and that, just as he shall demean himself, so will he win or lose the favour of some anti-English faction or sect to whom his own official existence may be owing, and by whose tolerance he may be even then holding it! Well, he may rise superior to that ordeal. But will he get credit for doing so? It has been well said that it is of less consequence that a Judge should be pure than that he should be believed to be pure; and that man must know but little of Ireland who would suppose that a political Chancellor in such a strait would be believed to be pure. His decisions would be cavilled at, his honesty impugned, and justice poisoned at its source. To give to a dependent partizan this unappealable authority over the controversies of the special Irish Land and Parliamentary laws, is scarcely a whit less abhorrent to constitutional principle than it would be to make him and his colleagues supreme arbiters over the decisions of the Election Judges. And who can say that even to that we may not come in time. Fancy a Gladstone Chancellor sitting in review upon the two Galway Judgments!

One thing is certain. If the state of the Irish Chancellorship be a fit subject for revision at all (and will anyone, not blinded by interest, say that it is not?) now or never is the time. For the issue now at stake is not merely whether it shall be negatively and temporarily spared, but whether its effete and corrupted life shall be galvanized and re-accredited, with adaptability for evil uses incalculably enlarged. The mischief will lie dormant for a time, and probably a considerable time, for it happens that the first appointment will be an unexceptional one, but we must look a little before us when laying down a system which is meant to be permanent.

It is customary to hear from interested defenders of the *status in quo* plausible platitudes about its being part of a larger subject, and how it is wrapped up in the general question of the Irish governmental system, for a change in which, it is said, the time is not yet ripe. Well it is a very hacknied form of fallacy to assume identity between two things which have no necessary connection, in order that the known difficulty of dealing with the one may throw a shield over the other. Governments can go on quite as well without an intermeddling Chancellor. Whether he would meddle at all, or how far, has always been at his own choosing. Our greatest and best, those to whose names we turn with pride—Redesdale, Hart, Sugden—what share did they ever stoop to in the defiling jobberies which make so large a part of what are called politics in Ireland? These were not the men to be seen passing daily from the bench of justice to the Castle. All the stock topics about the indispensability of some such office for purposes of state or administration, supervision of Magistracy, or the like, are mere interested fictions, phantasmal idealities which need only to be confronted to be made to vanish into space. As to the last named purpose, it is unmingled evil that it should be in the hands of a partizan; whose rebukes and lectures excite, if he be a strong man, anger and defiance, if a weak one, derision and scorn.

But the English Chancellor is political, why not, then, the Irish one? Words, without substance. Day and night are not more opposite than those two offices. The former is in keeping with its country and its bar. The most audacious of ministers would not dare to make a corrupt appointment to it. The English Chancellor is no haunter of the Home Office—still less is it possible that, there or in governmental or administrative bodies, he could be the delegate and representative of an ill-affected and aggressive power. And as for his judicial work, it will be that of Imperial Appeal only. By the now pending Amendment Bill the Imperial Court of Appeal will consist of two parts—first, the First Divisional Court, second, all the other Divisions. The former alone

will be the real Court for Imperial Appeals; the others will be practically (and probably before the Bill passes, avowedly,) a Court of Intermediate Appeal for England. The Chancellor will naturally confine himself to the presidency of the former, and he will sit there surrounded by many others of his own type and grade. The Irish Chancellor, on the other hand, will be to all intents a Judge Ordinary of Intermediate Appeal, taking the common run of equity and common law and criminal law, and the politico-legal work of the Land Act and the Parliamentary Voters' Acts. A transitional party-satellite put to work like that, and, in its most crucial branches, without the check of a possible Appeal! That will be a judicial sight such as for nearly two centuries has not been seen in the British Islands.

The Attorney-General for Ireland, a few days ago, opposed a motion for giving the appointment of the Irish Common Law Judges to the Chancellor, "to the same extent as in England" upon the ground that "the Irish Chancellor is a political officer, that he is appointed with a view to politics and changes with the Government of the day"—a distinct recognition of the undoubted truth that the political attributes of the Irish office are essentially different from those of the English one. And if that difference be such as to forbid that the Irish officer should be entrusted with the appointing of the Judges "to the same extent" as the English one, it ought surely to be of equal force to forbid that, while continuing thus political, there should be handed over to himself the functions of those very Judges.

Nor should we overlook the bearing of this upon the issue of success or failure of the New Court of Intermediate Appeal. Nothing could be more infelicitous than the constitution that is proposed for it. Its Presidents will be fluctuating, coming and going with Governments. They will vary indefinitely in merit. It may happen that just when one will have begun to be *au fait* at his work he will be displaced by a successor, in the selection of whom merit will have held but the second place, so that to-day you may have an accomplished Judge,

to-morrow, a charlatan. Nor is there much hope that this will be redressed by the two permanent members; for it is one of the felicities of the Bill that it has so bettered the position of the Judges of the first instance, both materially and functionally, relatively to those of Appeal, that no one who can command a choice will prefer the latter. Judges of already proved ability, and the more eminent of the Bar will hold back, and the supply will too often have to be drawn from a lower stratum. While the Bill is yet unpassed the Government have in their hands a pressure which might be so used as to guard their first appointments from this danger, but once the system is established, it will in time bear its natural fruits; and one of those will be that the Court of Appeal will have fastened upon it a reputation of inferiority to most of those whose decisions it will review, and all cases that can bear the cost will be carried on to the Imperial Court.

Criticism is but a barren thing after the conclusion has been foregone, and to speculate on what might have been is is perhaps now but matter of curiosity. Still one cannot help indulging in a retrospect of what might have happened had Lord Cairns been as fully master of the Irish legal specialties as he is of those of England. Certainly, to an ordinary apprehension it might have seemed that when some strong and resolute reformer, who would rise superior to ephemeral party ties and interests, would come to take in hand the so long vexed subject of the Irish Judicature, the very first thing he would lay his grasp on would be the flagrant monstrosity of seven Judgships of the first instance for Irish equity, with the giant waste and anachronism of the Chancellorship at their head. He would have begun at the top. If he retained the Chancellorship at all, he would have so remodelled and reconstituted it as to bring it into harmony with the times and with the new duties which he was about to impose upon it. He would have made it permanent and non-political as enjoined by the Act of Settlement. He would have reduced its salary to the very respectable figure of £6000 a year, equal to the judicial salary of the

Lord Chancellor of Great Britain, exceeding by £1000 those of all our Chief Judges, and at least double the largest income which the practice of the Irish Bar is now capable of yielding; and he would have cut down, proportionately, its extravagant and costly following. He would then have gone to the lower grades. He would have struck off at one stroke the two Judges in Bankruptcy and the two of Landed Estates. The former, which had its origin in one of the most notorious of jobs, has since subsisted as an excresence upon our judicial system. The reason for the special land tribunal came to an end years ago, and it would have been displaced by a Vice-Chancellor so long back as 1857, if the measure of Lord Palmerston's Government had not been obstructed by the use of tactics common in the House of Commons in those days, when every Irish measure involving a bit of patronage was fought over by the Irish parties, in office or expecting it. The place of the suppressed Bankruptcy Judges would be supplied by simply restoring their jurisdiction to its former depository, Chancery, with power, as now in England, of delegation to a competent Registrar, and aid, if found necessary, in country cases, from the Assistant Barristers. The place of the Landed Estates Court would be supplied also by restoring those affairs to the same original depository, conferring on it all the special powers regarding Parliamentary Titles, and transferring, along with the jurisdiction, the present Judge, in the quality of a Vice-Chancellor. It appears from a statement made in the House of Lords that that learned Judge has reported that he needs no assistance, but should he, or any successor of his find it otherwise, his brother Chancery Judges would be at hand to afford it. The footing on which these changes would have placed the establishment of first instance for Irish equity would be simply this—instead of seven judges, four—a Chancellor, a Master of the Rolls and two Vice-Chancellors; or, supposing that the Chancellor would confine himself to Appeals, then three, which, seeing that there are only four for England, would surely seem to be a not inadequate allowance. All

the Divisions of the High Court would be compact and homogeneous both in composition and in function, whilst, most precious boon of all, the Chancellor would be made to be a Judge instead of a partizan, and the cost of himself and his following brought within the bounds of moderation.

Instead of this we have seen a Bill which retained six of of the seven Judges, while it hedged the Chancellorship round with a very tautology of conservation. The first evil has since been so far modified that two Judges are to be struck off, but their jurisdiction instead of being restored to its original owner, has been sent across the Hall to the Exchequer. The only motive that can be imagined for this piece of seeming caprice is that something like it had been done last year for England; but it seems to have been quite overlooked that the reason for the change there, namely, the state of their Chancery lists, weighs here entirely in the opposite scale. Surely, in all conscience, a Lord Chancellor, two Lords Justices, a Master of the Rolls, a Vice-Chancellor, and another Judge, who, though still for some mysterious reason to be called "of the Landed Estates Court," will be to all intents a second Vice-Chancellor, ought to be an ample establishment for Equity in Ireland, without the fanciful and far-fetched intricacy of sending a department of its proper business to a Court of Common Law. But, we are not without some compensation here. If it be this that has furnished the excuse for retracing the false step of proposing to strike off a Baron, we may well be content. The Common Pleas and the Exchequer may rejoice, each in its fantastic annexe, if that shall be the means of preserving them in unmutilated numbers.

But the Chancellorship stands erect, and after it shall have had added to it's existing idiosyncracies the proposed new jurisdictions, it will surely present a combination—judicial, economic and constitutional—the like of which has not yet been seen in the United Kingdom. It will be a curious study to note the passage of the Bill through the House of Commons —to see whether the mesmerized silence of the Peers will

pursue it there; or whether out of the three nationalities there will be found one single member to utter so much as a protest against a scandal which in England or Scotland would not outlive a single session.

The truth is that Lord Cairns needed guidance in these small Irish matters, and he was not happy in what he found. He did not deign to communicate with the Irish Judges—certainly not as a body—whether with any of them individually I am unable to say. Such prompters as he had seem to have lacked prescience or impartiality. Of authoritative Press criticism he had not the advantage at all; for the matter being merely Irish, most of the journals and periodicals were either superciliously indifferent or languidly laudative—while the few who were warmer in commendation were also somewhat undiscriminating. In Ireland itself, the self-asserting and out-speaking classes made their voices heard, but their utterances smacked too much of class interests to carry the weight that might have been hoped for. The two professional bodies were but imperfectly appreciative of the merit of cutting down Judges or their staffs, while Dublin corporators and shop-keepers had for their one simple creed, that the grand desideratum was to have as much public money as possible expended in Dublin. Meantime those whose interests were really at stake, the inarticulate masses, remained, as in so many other things in Ireland, tongueless or overborne.

We are compelled the more to regret that Lord Cairns did not keep this Irish Bill more exclusively in his own hands, when we see the effects of his untrammelled action in the companion measure of the Session. He has rejected wholly the plan brought forward last year by the late Government for bringing Ireland and Scotland under the Court of Appeal as constituted by the Act of 1873. Had that plan passed into a law, as beyond doubt it would have done if that Government had remained in power, nothing could have prevented the jurisdiction of Final Appeal for Ireland from settling down into the hands of an Irish quorum, sitting in Dublin and

presided over by the political Chancellor—than which anything more disastrous to the connection between the two countries the most perverse ingenuity could not have devised. The incredible short-sightedness with which this plan was, not merely approved, but even grasped at, from the then opposition side, ought to have made Lord Cairns chary of putting faith in Irish counsels. From that danger we have been happily rescued by his foresight and firmness. But I trust the lesson will not be lost sight of hereafter, when nominating members to the "First Divisional Court of the Imperial Court of Appeal," which First Divisional Court will be the *only* truly *Imperial* Court of Appeal. I earnestly hope that the mistake will not be fallen into of thinking it sufficient qualification that men are holding or have held some Scotch or Irish office. I go farther than that. I think this First Division should be jealously guarded as the very innermost sanctuary of approved judicial excellence; and that as there are certain of her Majesty's regiments which are recruited only in England, so this *corps d'elite* of the law, this *creme de la creme* of the whole judiciary of the Empire, should be manned exclusively from that quarter where alone there ever have been or ever can be found the authoritative masters and expositors of the English Law.

DUBLIN, *June, 1874.*

Since the foregoing was written the House of Commons print of the Bill has been received, and, if it means what it says, it really does seem that the writer has been fighting with shadows. By the 12th Clause it is provided that *every* Judge of the High Court (that includes the Chancellor) shall hold his office for life, subject to removal by Her Majesty on an address from both Houses—that *no* Judge thereof shall be capable of being elected to or sitting in the House of Commons—and that every Judge thereof "*other than the Lord Chancellor*" shall take certain oaths. It is as plain as words could make it that the Lord Chancellor is within every

portion of that Clause, except the one from which he is expressly exempted, and, if there were nothing more, the permanency of his tenure would be fully secured.

Again, as to salary. By Clause A. (p. 9 of the print) it is provided that there shall be paid to the Lord Chancellor and other Chiefs "the same annual sums which the holders of those offices respectively receive at the time of the passing of this Act." But there is not at present *any* holder of the office of Chancellor and the Commissioners who are temporarily discharging its duties receive no salaries. Therefore, unless the Chancellor shall be appointed before the Bill receives the Royal assent, he can according to this Clause be paid no salary at all.

To be sure there is the general saving in the 86th Clause; —but that is subject to the qualification "except so far as herein is expressly directed" which removes out of the saving the subjects of Clauses 12 and A. So that it really does seem as if we were going to get an excellent Chancellor for life and *gratis*. It is possible that this may not be the actual intention of the draughtsman, but, if it be not, he ought at least to make what he does mean simple and unambiguous.

Another point is worth mentioning because, unless it shall be cleared up, it might occasion serious embarrassments Clause 6 provides that if at the commencement of the Act "the number of Puisne Justices and Junior Barons shall exceed seven in the whole, no new Judge of the High Court shall be appointed in the place of *any* such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed seven." By Clause 30 (p. 22 of print) it is provided that the "Queen's Bench Division shall have not less than four Judges." Suppose, that after the commencement of the Act, the first vacancy that happens among the nine Puisne Judges should be in the Queen's Bench Division—which of those two Clauses is the Government to obey—the 6th, which peremptorily forbids that such vacancy be filled up, or the 30th which with equal peremptoriness enjoins that the Judges of the Queen's Bench Division are to be never less than four?